

JAKE HUEBERT

IBLA 81-1111

Decided October 27, 1981

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application W 75816.

Affirmed.

1. Oil and Gas Leases: Generally: Applications -- Oil and Gas Leases: Applications: Attorney-in-Fact or Agents

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

APPEARANCES: Jake Huebert, pro se, and Mel Spinner, United Geological Service Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Jake Huebert appeals the decision of the Wyoming State Office, Bureau of Land Management (BLM), dated July 31, 1981, rejecting his simultaneous oil and gas lease application filed in the May 1981 drawing. His application was drawn with first priority for parcel WY 1052 and given serial number W 75816. BLM rejected the application because it had not been completely executed as required by 43 CFR 3112.2-1. 1/

1/ This reference is to the revised regulation promulgated at 45 FR 35156 (May 23, 1980) and effective June 16, 1980.

Appellant's simultaneous oil and gas lease application was executed on his behalf by an employee of United Geological Service Corporation (UGSC). Although the application card was otherwise properly filled out and signed, questions (d) through (f) on the application were not answered. In his notice of appeal, appellant attributes the unanswered questions to scrivener's error or mechanical error and indicates that the answers to the questions are "no." In a separate letter on appellant's behalf, Mel Spinner of UGSC explains that a new employee failed to check the appropriate answers on appellant's application and requests that appellant be granted the lease.

[1] The applicable regulations, 43 CFR 3112.2 and 3112.2-1, state in part:
 § 3112.2 How to file an application.

§ 3112.2-1 Simultaneous oil and gas lease applications.

(a) An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart. [Emphasis added.]

The application form clearly contemplates that items (d) through (f) would be checked on the application itself. Indeed, the introductory words to items (a) through (g) are as follows: "UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes)." (Original in italics.) Small boxes appear following each item to be checked in response.

Questions (d) through (f) are included in a list of questions on the application dealing with the applicant's qualifications to hold a lease and deal particularly with the circumstances of the execution of the application. The questions relate directly to the qualifications of the applicant to receive a lease. The failure to disclose a party in interest to the lease offer (question (d)) is a violation of the regulation at 43 CFR 3102.2-7, the assignment of an interest in the lease offer (question (e)) prior to lease issuance or lapse of 60 days after determination of priority is a violation of 43 CFR 3112.4-3, and any interest of the applicant in more than one application for the same parcel (question (f)) disqualifies the applicant under 43 CFR 3112.6-1(c). Although the Secretary of the Interior has discretion whether to issue an oil and gas lease for lands not within a known geological structure of a producing oil or gas field, he is required by statute, 30 U.S.C. § 226 (1976), to issue the lease to the first-qualified applicant therefor. Udall v. Tallman, 380 U.S. 1, 4 (1965). The Secretary is entitled to require such information as is necessary to ensure that an applicant for a lease is qualified. See Ken Wiley, 54 IBLA 367 (1981). The questions on the application form serve that purpose. The failure of the applicant to check an answer to each question creates a serious defect in the certification required by the application. This Board has consistently required strict compliance concerning the filing of applications in the simultaneous oil and

gas leasing program. See, e.g., Rose B. Carrington, 46 IBLA 149 (1980); Margaret H. Wygocki, 45 IBLA 79 (1980); John L. Messinger, 45 IBLA 62 (1980). 2/ An application is not complete where questions (d) through (f) have not been answered. The failure to complete the application may not be excused even though the omission was inadvertent and the result of a leasing service error.

An incomplete application may not be cured by later submission of the required information. Edward Marcinko, 56 IBLA 289 (1981); Vincent M. D'Amico, 55 IBLA 116 (1981) (on appeal). See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

2/ Although these decisions arose under the former regulations, the requirement of strict compliance will still be enforced under the revised regulations and these decisions may be considered precedential.

